

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

Application 11881 Permit 8246 License 4334

**ORDER APPROVING CHANGES TO POINTS OF DIVERSION
AND PLACE OF USE AND AMENDING LICENSE**

WHEREAS:

1. License 4334 was issued to the Wallace Brothers on October 10, 1961 pursuant to Application 11881.
2. The State Water Resources Control Board (SWRCB) received a petition requesting change in the points of diversion and place of use on May 11, 1995.
3. The SWRCB has determined that the changes to the points of diversion and place of use are appropriate and do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
4. The license condition pertaining to continuing authority of the SWRCB should be updated to conform to Section 780 (a), Title 23 of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The Points of Diversion under this license shall be as follows:
 - a. By California Coordinate System, Zone 2, North 518,300 feet and East 1,995,750 feet being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 6, T14N, R1W, MDB&M;
 - b. By California Coordinate System, Zone 2, North 518,300 feet and East 1,995,850 feet being within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T14N, R1W, MDB&M;
 - c. By California Coordinate System, Zone 2, North 517,500 feet and East 1,995,850 feet being within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 6, T14N, R1W, MDB&M.
2. The Place of Use under this license shall be as follows:

550 acres within Section 4, T14N, R1W, MDB&M;
586 acres within Section 5, T14N, R1W, MDB&M;
430 acres within Section 6, T14N, R1W, MDB&M;
136 acres within Section 7, T14N, R1W, MDB&M;
160 acres within Section 8, T14N, R1W, MDB&M;
360 acres within Section 9, T14N, R1W, MDB&M;
224 acres within Section 32, T15N, R1W, MDB&M;
492 acres within Section 33, T15N, R1W, MDB&M;

328 acres within Section 34, T15N, R1W, MDB&M;
3,266 acres Total as shown on map dated March 11, 1997
on file with the SWRCB.

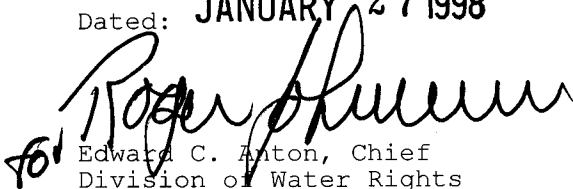
3. The total quantity of water diverted under this License, together with that diverted under the Permits issued pursuant to Applications 23945, 23946, 25792 and 25793, shall not exceed 16,419 acre-feet per year.
4. The existing continuing authority condition under License 4334 shall be amended as follows:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust. (0000012)

Dated: JANUARY 27 1998


to: Edward C. Anton, Chief
Division of Water Rights

L 4334

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23945)
and 23946, and Petitions to Change)
Application 23945 and License 4334)
(Application 11881))
WILLIAM P. AND ROBERT L. WALLACE)
DBA WALLACE BROTHERS)
Applicant and Petitioner)

Decision: 1590

Source: Reclamation
District No. 2047
Main Drain Canal

County: Colusa

DECISION APPROVING APPLICATIONS 23945 AND 23946, AND PETITIONS
TO CHANGE APPLICATION 23945 AND LICENSED APPLICATION 11881

BY THE BOARD:

William P. and Robert L. Wallace dba Wallace Brothers having filed Applications 23945 and 23946 for permits to appropriate unappropriated water; protests having been received; a hearing having been held; petitions for change having been filed; protests having been resolved; the Board having considered all available information, finds as follows:

Substance of Applications 23945 and 23946

1. Applicants propose under each of the two applications to divert 17 cubic feet per second (cfs) from RD 2047 Main Drain Canal (aka Colusa Basin Drainage Canal) for irrigation purposes. Application 23945 is limited to 4100 acre-feet per annum (afa) to irrigate a net area of 852 acres owned by applicant. Application 23946 is limited to 6600 afa for a net area of 1883 acres leased by applicant. The diversion season for both applications

3

is from April 1 to June 30 and September 1 to September 30. The applications have a common point of diversion within the NW¼ of SE¼ of Section 6, T14N, R1W, MDB&M.*

Substance of Petition to Change Application 23945

2. The proposed change to Application 23945 is the addition of a second point of diversion on the west bank of the canal (currently the point allowed under licensed Application 11881), directly across from the existing point on the east bank, and a change in the place of use to 852 acres net within a gross area of 1458 acres. The location of the new point of diversion is within the NE¼ of SW¼ of Section 6, T14N, R1W. There is no change in source or increase in appropriation. The new point of diversion would allow irrigation of the land lying west of the canal.

Substance of Petition to Change Licensed Application 11881

3. It is proposed under licensed Application 11881 to change the point of diversion from the old point on the west bank of the canal to a point directly opposite on the east bank. The authorized place of use consists of 206.3 acres lying west of the canal. It is also proposed to change the place of use to a net 206.3 acres within a gross area of 1458 acres. The location of the new point of diversion is within the NW¼ of SE¼ of Section 6, T14N, R1W. There is no change in source or increase in appropriation. Approval of the petition would permit irrigating land on both sides of the canal. The license allows diversion of 13 cfs from about April 15 to October 1 of each year.

Applicants' Project

4. The applicants' project is located about 30 miles north of Knights Landing and about 10 miles south of Colusa within the flood plain of the Sacramento River. The canal is an artificial channel constructed by

*All references to Township and Range indicate Mount Diablo Base and Meridian (MDB&M).

Reclamation District 2047, in the 1920's, to collect and convey irrigation drainage flows. It originates near Willows and flows in a southerly direction for about 70 miles to Knights Landing where it empties into the Sacramento River through controlled gates or into the Knights Landing Ridge Cut which leads to the Yolo Bypass. Wallace Brothers irrigate a total of 2,735 acres, both owned and leased.

Protests

5. Applications 23945 and 23946 were protested by numerous appropriators represented by Knights Landing Ridge Cut Water Users and Drainage Association, by Reclamation District 108 and by H. H. Balsdon as an individual protestant. The protests were based on injury to vested rights due to insufficient water to satisfy all prior rights. At the hearing on October 18, 1977, the applicants and protestants entered into a stipulated agreement and the protests were withdrawn. The agreement, signed by representatives of the above protestants, requires the applicants to cease diverting when notified by one of the protestants that insufficient water exists in the canal. Protests against the petitions to change were not accepted since the protestants' dismissal conditions had already been met.

Availability of Water

6. During the irrigation season the U. S. Bureau of Reclamation (Bureau) and Glenn-Colusa Irrigation District divert water from the Sacramento River for irrigation purposes. Return flow enters the Colusa Basin Drainage Canal (Canal) and is available for diversion and use on lands adjacent to the Canal. Nearly all of the flow in the Canal is return flow or operating waste from use upstream, such as large areas planted in rice

with resultant high return flow (Staff Exhibit 1). The Canal outlet to Sacramento River is controlled at Knights Landing to allow sufficient water to flow through Knights Landing Ridge Cut into Yolo Bypass to satisfy demands of users on that channel. The flow at the Knights Landing Outfall Gates has been measured by the Department of Water Resources and is published in Bulletins 23 and 130. Applicants' Exhibit 12 shows that for the period 1965 through 1975 during the months of April, May, June, and September water is physically present to supply the applications at least 86 percent of the time. The applicants' Exhibits 5 and 10 indicate the same thing in bar chart form (RT 22 and 23). During July and August there is no water available for appropriation in the Sacramento River and Delta to which the Canal is tributary. The flows in the Canal and Ridge Cut are usually adequate to supply requirements of all the diverters throughout each irrigation season except occasionally in April when rice checks are being filled.

Environmental Considerations

7. The Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et. seq.) and the State Guidelines, and the Board determines that there will be no significant effect on the environment as a result of the project.

Discussion

8. The Board is the plaintiff in the litigation against the Wallace Brothers alleging illegal diversion of water during the drought in July and August of 1977. Wallace Brothers claimed they were

taking water from the canal under riparian rights and/or prescriptive rights. The California Supreme Court's decision in People vs. Shirokow, 26 Cal. 3d 301 (1980) made it clear that one cannot acquire prescriptive rights against the State for diversions initiated after 1914 as is the case here. It is also extremely unlikely that a riparian right exists to take water from the Canal during the mid-summer months since almost all the flow during that time is foreign (imported) water to which riparian rights do not attach.

9. The 2047 Drain Water Users Association is currently negotiating with the Bureau for a supplemental supply from Shasta Dam in July and August. This water would not be supplied directly to Wallace Brothers and other members of the Association through the canal since the Bureau has no conduits capable of getting the water there. Rather, the water would be released into the Sacramento River to flow into the Sacramento-San Joaquin Delta in exchange for water diverted from the Canal.

10. Prior to the Reclamation Reform Act of 1982, Wallace Brothers could not have obtained a satisfactory contract with the Bureau because they own more than 160 acres. The Reclamation Reform Act of 1982 increases the acreage limit to 960 acres and should make it possible to obtain a contract. Wallace Brothers have agreed to contract for an interim supply of water for July and August with Yuba County Water Agency (YCWA) or elsewhere, pending negotiation of a contract with the Bureau. YCWA has water available for sale for July and August of this year.

11. Previously, Wallace Brothers had proposed that 34 cfs could be supplied during July and August by wells. No recommendation was made to the Board for a decision on the applications and change petitions pending a showing by Wallace Brothers that they have operational wells capable of producing this supplemental water supply. As discussed above, Wallace Brothers now intend to purchase supplemental water for July and August. Any permits should be strictly conditioned upon the Wallace Brothers providing clear evidence to the Board that all diversions not authorized by appropriative permits or licenses are covered by water purchase contracts for the full amount of water diverted.

Conclusions and Recommendation

12. From the foregoing findings, the Board concludes that water is available which can be appropriated without injury to downstream users, and that Application 23945 and 23946 together with pertinent changes as petitioned should be approved and that permits be issued. The Board also concludes that change petitions on licensed Application 11881 should be approved. The approvals should be subject to the conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that licensed Application 11881 be amended to change the point of diversion and place of use as requested. It is further ordered that Application 23945, as amended by petition, and Application 23946, be approved and that permits be issued subject to vested rights. Both permits shall contain all applicable standard permit terms (6, 9, 10, 11, 12, 13)* in addition to the following conditions:

Application 23945

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 17 cubic feet per second to be diverted from April 1 to June 30, and September 1 to September 30 of each year. The maximum amount diverted under this permit shall not exceed 4100 acre-feet per year.

Application 23946

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 17 cubic feet per second to be diverted from April 1 to June 30, and September 1 to September 30 of each year. The maximum amount diverted under this permit shall not exceed 6600 acre-feet per year.

*The Board keeps a list of standard permit terms. Copies of these are obtained upon request.

Both Applications

2. This permit is subject to permittee obtaining an alternate water supply through a purchase contract or use of groundwater for July and August of each year for the place of use specified in this permit. Until a permanent contract for an alternate water supply is signed, permittee shall, prior to March 1 of each year, inform the Board of the source of alternate supply for the following July and August. No water may be diverted under this permit each year until the Board is so notified. If the alternate supply is to be provided by a water purchase exchange contract, the permittee shall, by March 1 of each year, provide the Board a copy of an executed contract covering all diversions from the Canal which are not covered by water right permits or licenses.

3. Permittee shall comply with the following provision which is included in the agreement between permittee, Reclamation District 108, Knights Landing Ridge Cut Water Users and Drainage Association, and H. H. Balsdon as an individual, executed on October 18, 1977:

"Permittee shall cease to divert water under this permit whenever any protestant, who is party to the above agreement, notifies permittee that insufficient water is available to satisfy prior rights. Permittee shall not recommence diverting until notified by the protestant that water is available for appropriation."

4. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue.

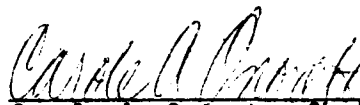
5. The equivalent of the continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there be no interference with other vested rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed.

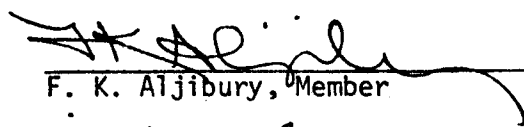
6. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to the results of a comprehensive analysis of the availability of unappropriated water in the Sacramento River Basin. Action to change the season of diversion will be taken only after notice to interested parties and opportunity for hearing.

7. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

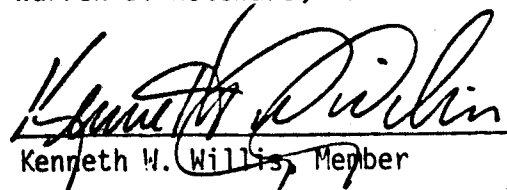
8. Permittee shall consult with the Division of Water Rights and the Department of Water Resources and develop and implement a water conservation program or actions. A progress report on development of the program shall be submitted to the Board within six months. The program or proposed actions shall be presented to the Board for approval within one year from the date of this order or such further time as may, for good cause shown, be allowed by the Board.

Dated: February 17, 1983


Carole A. Onorato, Chairwoman


F. K. Aljibury, Member


Warren D. Noteware, Member


Kenneth W. Willis, Member

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 11881

PERMIT 8246

LICENSE 4334

ORDER ALLOWING CHANGE IN POINT OF DIVERSION/AND PLACE OF USE

WHEREAS:

1. License 4334 was issued to Wallace Brothers and was filed with the County Recorder of Colusa County on April 25, 1956.
2. License 4334 was subsequently assigned to William P. Wallace and Robert L. Wallace dba Wallace Brothers.
3. A petition for change in point of diversion, and place of use has been filed with the State Water Resources Control Board and after a hearing said Board adopted Decision 1590 finding that good cause for such changes has been shown.
4. The Board has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The point of diversion under this license shall be as follows:

North 80° 02° West, 7,922 feet from SE corner of Section 5, being within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T14N, RLW, MDB&M.

2. The place of use under this license shall be as follows:

206.3 acres net within a gross area of 1,458 acres described as follows:

460 acres within Section 5; 375.5 acres within Section 6; 136.5 acres within Section 7; 162 acres within Section 8; 164 acres within Section 9, all being in T14N, RLW, MDB&M; 160 acres within Section 32, T15N, RLW, MDB&M.

Dated: JULY 21 1983

Raymond Walsh

Raymond Walsh, Chief
Division of Water Rights



STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

License for Diversion and Use of Water

APPLICATION 11881

PERMIT 8246

LICENSE 4334

THIS IS TO CERTIFY, That Wallace Brothers

P. O. Box 284

Arbuckle, California

Notice of Assignment (Over)

has made proof as of May 25, 1955,
(the date of inspection) to the satisfaction of the State Engineer of California of a right to the use of the water of
Main Canal of Reclamation District No. 2047 in Colusa County

tributary to Sacramento River

for the purpose of irrigation use
under Permit 8246 of the Department of Public Works and that said right to the use of said water has
been perfected in accordance with the laws of California, the Rules and Regulations of the Department of Public Works
and the terms of the said permit; that the priority of the right herein confirmed dates from May 15, 1947;
and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited
to the amount actually beneficially used for said purposes and shall not exceed thirteen (13) cubic feet
per second to be diverted from about April 15 to about October 1 of each year.

The equivalent of such continuous flow allowance for any thirty day period
may be diverted in a shorter time if there be no interference with other vested
rights.

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The point of diversion of such water is located north fifty-two degrees forty-eight
minutes east (N52°48'E) two thousand two hundred sixty-five (2,265) feet from SW
corner of Section 6, T14N, R1W, MDB&M, being within NE1/4 of SW1/4 of said Section 6.

A description of the lands or the place where such water is put to beneficial use
is as follows:

206.3 acres within W1/2 of Section 6 and N1/2 of NW1/4 of Section 7, T14N, R1W,
MDB&M, as shown on map on file with State Engineer.

All rights and privileges under this license including method of diversion, method of use and quantity of water
diverted are subject to the continuing authority of the Department acting through the State Engineer in accordance
with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or
unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time
to time by the State Engineer.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein
specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Department.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

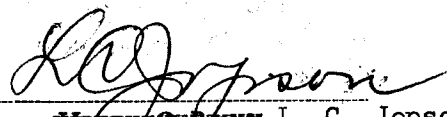
Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property can not agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.



Witness my hand and the seal of the Department of Public Works of the State of California, this 24TH day of April, 1956.

HARVEY O. BANKS,
Assistant State Engineer

By 
L. C. Jopson
Assistant State Engineer

10-10-61 - Names chgd. to William P. Wallace & Robert L. Wallace dba Wallace Bros.

LICENSE 1334

STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

LICENSE
TO APPROPRIATE WATER

ISSUED TO Wallace Brothers

DATED APR 24 1956

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